IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 13TH APRIL 2007 / 23RD CHAITHRA 1929

WA.No. 659 OF 2007()

AGAINST THE JUDGEMENT IN OP.3535/2003
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APPELLANT: RESPONDENT NO.3

THE PROJECT DIRECTOR, STED PROJECT,
5TH FLOOR, INDUS AVENUE, KALLAI ROAD,
KOZHIKODE-673 002.

BY ADV. SRI.K.RAMAKUMAR

RESPONDENTS: PETITIONERS &RESPONDENTS 1,2, & 4
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1. MADHURI P., RECEPTIONIST,
STED,(SCIENCE & TECHNOLOGY ENTERPRENEURSHIP
DEVELOPMENT) PROJECT, KOZHIKODE-673002,
RESIDING AT: 'AMMA', NEAR GOVT.HIGHER SECONDARY
SCHOOL, FEROKE P.O., KOZHIKODE.

2. GEEJABAI P.M., COMPUTER FACULTY,
STED PROJECT, KOZHIKODE-673 002.
RESIDING AT 'SSANTHOSH'.29/1265,
KOTTOLI, KOZHIKODE-674 016.

3. P.SREEDHARAN , PROJECT ASSISTANT,
STED PROJECT, KOZHIKODE-673 002,
RESIDING AT 'PUTHIYOTTIL' HOUSE,
MUCHUKUNNU P.O., QUILANDY.

4. THE CHIEF SECRETARY TO GOVERNMENT OF
KERALA & CHAIRMAN, STEERING COMMITTEE,
STED PROJECT OFFICE OF THE CHIEF SECRETARY,
GOVT. SECRETARIAT BUILDINGS,
THIRUVANANTHAPURAM-695 001.

5. THE EX-OFFICIO SECRETARY TO GOVERNMENT
OF KERALA, SCIENCE, TECHNOLOGY & ENVIRONMENT
DEPARTMENT & CHAIRMAN, STED(SCIENCE, TECHNOLOGY &
ENVIRONMENT COMMITTEE), GOVERNMENT OF KERALA,
SASTHRA BHAVAN, PATTOM, THIRUVANANTHAPURAM.

6. SRI. T.K.MANZOOR, FORMER PROJECT
DIRECTOR, STED, INDUS AVENUE, KALLAI ROAD,
KOZHIKODE-673 002.

GOVT. PLEADER SRI. BENNY GERVASIS.
ADV. SRI. P.N. RAVEENDRAN.
ADV. SRI. ALEXANDER THOMAS.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 19.3.2007, THE COURT ON 13/04/2007, DELIVERED THE FOLLOWING:

P.R. RAMAN & ANTONY DOMINIC, JJ.

W.A. NO. 659 OF 2007

DATED THIS, THE 13TH DAY OF APRIL, 2007.

J U D G M E N T

Raman, J.

The appellant herein was the third respondent in the writ petition. Respondents 1 to 3 herein were the petitioners in O.P. 3535/2003. They were employees of the STED Project, Kozhikode. It is a project originally initiated by the National Science and Technology Entrepreneurship Development Board under the Department of Science and Technology, Government of India, in 1985, which was reconstituted as an autonomous body under the Government of Kerala as per G.O.(Rt) 103/2001/STED dated 26.3.2001 copy of which is produced as Ext.R3(A) along with the counter affidavit filed by Respondents 3 and 4 in the writ petition(the appellant herein).

2. Writ petitioners 1 to 3 were appointed as receptionist, computer faculty and project assistant respectively, in the STED Project. Petitioners 1 and 2, who were lady employees, appears to have raised some allegations of

gender harassment against the then Project Director Sri. E.K. Manzoor and while so, their services were terminated as per Exts.P14 to P16 orders of the Project Director dated 22.1.2003. It was alleged therein that the petitioners were daily wage employees who committed grave misconduct of not attending the Office punctually and discharging their duties properly and that on 1.11.2002 evening, they deliberately shouted that the Project Director harassed them. In the case of Sreedharan, the third petitioner, it was alleged that he along with petitioner 1 and 2, deliberately shouted that the Project Director harassed the first petitioner and also spread defamatory rumors against the Project Director and a fabricated complaint was lodged on the said allegation in the Kasaba Police Station. It was further stated that they were issued memos to explain the reasons as to why action should not have been taken against them, that in order to examine the issues an Additional District Magistrate was appointed as Enquiry Officer and the enquiry report submitted by him disclose that they were deliberately making false complaint to tarnish the Project Director with ill-motives. Accordingly, notices were issued as per Exts.P8 to P10 to show cause why their services shall not be terminated. The explanation offered being not satisfactory, it was ordered that their services will stand terminated with effect from 22.1.2003. It is seeking to quash Exts.P8 to

P10 show cause notices and Exts. P14 to P16 orders of termination, and other consequential reliefs, that the writ petition was filed.

3. It was inter alia contended in the writ petition that Exts.P8 to P10 show cause notices and the subsequent termination orders issued as per Exts.P14 to P16 are per se illegal and unenforceable, that the impugned action was in violation of the Supreme Court directives in **Vishaka & Others v. State of Rajasthan & Others** ((1997) 6 SCC 241), that the termination of service was in gross violation of natural justice and hence violative of Article 14 of the Constitution of India and these orders are null and void. According to them, no reasonable opportunity was given to them to rebut the allegations and materials, if any, relied on by the employer and to cross examine the witnesses, if any, relied on by the 4th respondent and to adduce their own evidence in the matter. It is also their case that the so called enquiry by the Additional District Magistrate, prior to the show cause notice, was nothing but a false and cannot be acted upon and the allegations of gender harassment raised by them against the 4th respondent was required to be adjudicated by a competent forum as mandated in Vishaka's case (supra) and that it was solely as a counter blast that the memos were issued to them and eventually their services were terminated.

4. In the counter affidavit filed for and on behalf of Respondents 3 and 4, they denied those allegations. According to them, the challenge made in the writ petition is against show cause notices pursuant to which action has already been completed by stopping engagement of the petitioners as daily wage employees, that the orders of termination are not amenable to the writ jurisdiction of this Court since there was only a contract of personal service which cannot be enforced in law and the petitioners have no right to continue in service at all. They also contended that the STED Project is an autonomous body not depending upon the Government or discharging any test evolved by the Supreme Court to brought STED Project as State or other authority and hence the writ petition is liable to be dismissed as not amenable to this Court under Article 226 of the Constitution of India. On merits, it was contended that there had been no gender harassment as alleged and the same was alleged as a part of an attempt to prejudice the respondents and that Vishaka's case has no relevance to the issue in the present case.

5. In the reply affidavit filed by the writ petitioners, they maintained their stand that the STED Project is under the Government of India in the Department of Science & Technology and that it is a professional Government Organization for entrepreneurship and employment generation.

According to them, it offers product specific entrepreneurial programmes for local self Government bodies and other related agencies and its activities consists of plan programme and associates with all District Panchayaths, Municipalities, Corporations and the big chunk of the block and Grama Panchayaths and various departmental agencies etc. They also placed reliance on Exts.P17 (a) and P17(b) proceedings, in support of their contention that STED Project is funded by the National Science & Technology Entrepreneurship Department Board (NSTEDB) under the Department of Science & Technology, Government of India. Placing reliance on Ext.P18 Government letter, they contends that STED receives grant-in-aid from Government.

6. The learned Single Judge held that the STED Project is a project evolved with the duel objective of entrepreneurship development and employment generation through science and technology inputs, that the project was initiated by the National Science and Technology Entrepreneurship Development Board under the Department of Science and Technology, Government of India and that by Ext.R3(a) order, the Government of Kerala, after examining the study report submitted by Prof. A.M. Salim, Chief (Projects) of Planning Board and also the recommendations made by the sub committee constituted by the third

steering committee meeting of the STED, accorded sanction for the restructuring of STED Project so as to function as an autonomous body on condition that there will be no financial commitment on the part of the State Government in that regard. Though the appellant contended that in the absence of any financial commitment on the part of the State Government, the STED Project is not a State as defined under Article 12 of the Constitution, the learned Single Judge , after evaluating the materials on record found that the STED Project is amenable to Article 226 of the Constitution of India and the action of terminating the services of the petitioners by issuing Exts.P14 to P16 is arbitrary and violative of Article 14 and 16 of the Constitution of India and as such liable to be quashed. Based on Ext.R3(b) report, it is stated that the enquiring authority had not gone into the full enquiry regarding the particular incident and a detailed enquiry is required to reveal the full details and as such based on such a report, no valid action can be taken against the writ petitioners. It was also held that Ext.R3(b) report has not been shown to have served on the petitioners. Having quashed the dismissal orders issued to the petitioners, the learned Single Judge moulded the relief by directing completion of the enquiry into the allegation of gender harassment raised by petitioners 1 and 2 against the 4th respondent expeditiously. In this regard, it was even

observed that it is in fact the prayer of not only the petitioners but also the 4th respondent (appellant) who submitted that because of the pendency of that enquiry, he is also prejudiced since a criminal complaint is pending against him regarding the allegation of gender harassment filed by the petitioners. Accordingly, the second respondent was directed to constitute a committee as contemplated under the decision of the apex court in Vishaka's case (supra), if not already constituted and complete the proceedings within three months. The learned Single Judge made it clear that he is not expressing any opinion whatsoever regarding the merits of the contentions of the parties regarding gender harassment which is the subject matter of enquiry pending as contemplated in the decision of the apex court in Vishaka's case (supra) and also in the criminal case pending. It was made clear that after receiving the report, it will be open to the disciplinary authority of the petitioners, if the authority is still of the opinion that the disciplinary proceedings against the petitioners should be continued, to complete the disciplinary proceedings after complying with the principles of natural justice such as notice calling for explanations of the petitioners and conducting enquiry in accordance with law. In the mean time, petitioners were directed to be reinstated in service forthwith and allow them to continue as before till final orders are passed in the disciplinary proceedings

to be initiated and completed. Their entitlement of back wages for the period when they were kept out of service was directed to be decided after conclusion of the disciplinary proceedings. Aggrieved by the above directions of the learned Single Judge, the 3rd respondent has come up in appeal.

7. Learned counsel Sri. K. Ramakumar, appearing on behalf of the appellants, reiterated his contentions in the following manner: STED Project is not an "other authority" under the Constitution of India and hence not amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India and that even assuming, without conceding, that it could be treated as an "other authority" in so far as there is no violation of any fundamental rights, no relief could be granted in a writ proceedings, rather the parties should be relegated to the ordinary law by raising a dispute under the Industrial Disputes Act. He also placed reliance on the decision of this Court in **Sophi v. F.A.C.T.** (1984 KLT 32) in support of his contention. On behalf of the 4th respondent (in the writ petition), it was contended by the learned counsel Sri. Ravi Achan, that the allegations of gender harassment is nothing but an abuse of process of law and the criminal proceedings itself is pending to be heard and disposed of. On behalf of the party respondents (writ petitioners) they sought to justify the

judgment of the learned Single Judge.

8. We have heard the parties.

9. We shall first consider the contention as to whether the STED Project represented by the Project Director, the third respondent, is an "other authority" under Article 12 of the Constitution of India. The test to decide as to whether a body is a "State" or "other authority" under Article 12 of the Constitution has underwent sweeping changes since the decision of the apex court in **Sukhdev Singh v. Bhagatram** (1975 (1) SCC 1331). The question that arose for consideration therein was as to whether the Oil and Natural Gas Commission, Life Insurance Corporation and Industrial Finance Corporation are 'authorities' within Article 12 of the Constitution of India. The majority view expressed by A.N. Ray, C.J. indicate that the concept of 'State' would include a public authority which is a body which has public or statutory duty and which performs those duties and carry out the transactions for the benefit of the public. Mathew, J. in his concurrent judgment held that the 'State' is a distinct entity and it can only act as instrumental to judicial pronouncements and therefore, there is nothing in 'State' acting through Corporation and making it an agency or instrumentality of the State. It was also held that if the given functions are of public importance or exclusively related to Governmental functions

it has to be classified as Governmental agency then even the presence or absence of State Financial might be relevant in making the function of the State action.

10. The ultimate question held to be relevant was whether the Corporation is instrumental in carrying out the business, in other words for whose benefit the Corporation is carrying out the business.

11. The test propounded by Mathew, J. in **Sukhdev Singh** ((1975) 1 SCC 421) were elaborated in **Ramana Deyaram Shetty v. International Airpoort Authority of India** ((AIR 1979 SC 1628) and were reformulated two years later by a Constitution Bench in **Ajay Hasia v. Khalid Mujib Sehravardi** ((1981) 1 SCC 722). The test propounded in **Ramana Dayaram Shetty's** case (AIR 1979 SC 1628) for determination was as to when a Corporation can be said to be an instrumentality or agency of the Government. It was summarized that the existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality. Likewise, whether the corporation enjoys monopoly status which is State-conferred or State-protected was also held to be a relevant factor. If a Department of Government is transferred to a corporation, it would be yet another factor supportive of the inference that

the corporation is an instrumentality or agency of the Government.

12. We need not multiply with decisions on the point. The scope and aptitude of the term 'State' or 'other authority' under Article 12 was widened by the various decisions of the apex court. It would be sufficient if we refer to the decision of a Seven Judge Bench of the apex court in **Pradeep Kumar Biswas v. Indian Institute of Chemical Biology (**(2002) 5 SCC 111) wherein the majority after surveying the entire case law on the subject came to the conclusion that from whichever perspective, the facts are considered there can be no doubt that the conclusions reached in Sabhajit Tewary's case (AIR 1975 SC 1329) was erroneous and hence it was over ruled. It was held that had the facts been closely scrutinized in the proper perspective, it could have led and can only lead to the conclusion that CSIR is a State within the meaning of Article 12.

13. In **Zee Telefilms Ltd. v. Union of India** ((2005)4 SCC 649) the apex court, after following the test laid down in **Pradeep Kumar's** case (2002(5) SCC 111) held that the Board of Control for Cricket in India (BCCI) is not shown to be financially, functionally or administratively dominated by or under the control of the Government and any control exercised by the Government is not pervasive but merely regulatory in

nature and therefore BCCI is not 'State' for the purposes of Article 12. It was also held that BCCI is only a private body; but public interest was involved in the activities of the Board and therefore it is a State Actor. It was held that the Constitution is an ongoing document and thus should be interpreted liberally.

14. In **Shrikant v. Vasantrao** ((2006) 2 SCC 682) the precise issue arose for considration was whether the 'Maharashtra Jeevan Pradhikaran' is part and parcel of the State Government. After reiterating the test for a body to fall under the definition of 'State' it was held that Godawari Marathwada Irrigation Development Corporation and Maharashtra Jeevan Pradhikaran are part of the 'State' under Article 12.

15. Coming to the facts of the present case, it can be seen from the Government Order Ext.R3(a) dated 26.3.2001 that STED Project was one among the 13 Projects sponsored by National Science and Technology Entrepreneurship Development (NSTED) Board, Department of Science and Technology (DST), Government of India. The same was implemented in Kozhikode District by a task force with the District Collector as patron and guided at the State level by a Steering Committee with Chief Secretary as Chairman. The task force entrusted Prof. A.M. Salim, Chief (Projects) Kerala State Planning Board for conducting a detailed study and report on

restructuring of STED Project. The Steering Committee reviewed the study report submitted as stated above and authorized a sub Committee to restructure the STED Project so as to make it a permanent autonomous body under Science, Technology and Environment Committee. The Government, after considering the study report and the recommendations made by the sub Committee accorded sanction for the restructuring of the STED Project so as to function as an autonomous body, but without any financial commitment on the part of the State Government. The constitution of the STED Project as re-structured was done by the Government with the District Collector as patron and the State Level Steering Committee with Chief Secretary as Chairman. The other members of the Steering Committee include members, ex-officio Secretary to Government, Department of Science & Technology and Environment, Secretary to Government, Planning and Economic Affairs Department, Secretary to Government, Industries Department, , District Collector, Kozhikode, Adviser, Department of Science & Technology, Senior Geologist, Geological Survey of India, Managing Director, Kerala Financial Corporation, Managing Director, Kerala Small Industries Development Corporation Ltd., Chief (Industries Division), State Planning Board and the Project Director, STED Project, Kozhikode. It has been

specifically averred so in the reply affidavit filed by the writ petitioners regarding its constitution. Ext.P17 produced along with the reply affidavit also supports this contention. Further, the official prospectus issued by the STED as evidenced by Ext.P17(a) and the proceedings issued by respondents 3 and 4 as evidenced by Ext.P17(b) would also show that STED is a project under the Government of India, Department of Science & Technology and is a Professional Government Organization for Entrepreneurship and Employment Generation and it specifies in product, Entrepreneurial Programs for Local Self Government bodies and other related agencies. It is functioning with the objectives of entrepreneurship, development in employment generation and its activities consist of associating with self Government bodies. Therefore, applying the test as laid down by the apex court in various decisions as referred to above to the facts and circumstances of the case there leaves no room to doubt that STED is an 'other authority' under Article 12 of the Constitution of India and hence amenable to the writ jurisdiction under Article 226 of the Constitution.

16. It was then contended by the learned counsel for the appellant that even assuming that though it can be an 'other authority' under Article 12 of the Constitution, unless there is any infringement of the fundamental

rights guaranteed under the Constitution of India, a writ petition is not maintainable. In this connection, a Division Bench decision of this Court in **K.S. Sophi v. Fertilisers & Chemicals Travancore Ltd.** (F.A.C.T.) (1984 KLT 32) was relied on. In that case, this court, hold that F.A.C.T. is a 'State' but a writ will issue only if there is an infringement in the fundamental right. That was a case where an employee of the F.A.C.T. who as appointed for a term was eventually terminated on its expiry since the services were terminated by enforcing the terms of the contract, it was held that the petitioner therein cannot compel the management to retain her in service beyond the duration of the contract and her termination does not violate any rule or regulation made by the management.

17. But in the present case, Exts.P14 to P16 issued in the case of the petitioners were not termination of service simplicitor, on the expiry of any term. On the other hand, their services were terminated for certain misconduct alleged against them and therefore, it created a stigma. Hence unless such termination is shown issued after complying with the principles of natural justice, such action will be arbitrary and violative of Articles 14 and 16 of the Constitution of India and thus, they have an enforceable right by invoking the powers of this Court under Article 226 of the Constitution.

18. It has to be noticed that the writ petitioners alleged that the 4th

respondent had indulged in gender harassment against petitioners 1 and 2 which was supported by the third petitioner and it is stated to be the reason for the ill-will of the 4th respondent against them in initiating the disciplinary proceedings which culminated in Exts.P14 to P16 orders. But the authorities, instead of taking steps to conduct an enquiry into the allegation of gender harassment in accordance with the directions of the apex court, has proceeded to terminate their service as a counter-blast and even sought for a direction from this Court for completion of the enquiry in accordance with law as laid down by the apex court in Vishaka's case (supra). As regards the termination of the petitioners' services is concerned, it was alleged the enquiry authority, except to question them, did not conduct any detailed enquiry into the allegation and the usual procedure such as issuance of notice of enquiry, examination of witnesses with list of witnesses and documents issued to the petitioners, etc. was not followed. They were never given any opportunity to cross examine the witnesses and to adduce their own evidence in the matter. Even a copy of the enquiry report was not furnished to them.

19. After referring to Ext.R3(b) enquiry report, the learned Single Judge found that the enquiry report is nothing but an apology for an enquiry report in a disciplinary proceedings and that the respondents in the writ

petition have not satisfied the court that the enquiry report was submitted after complying with the usual procedure expected of a disciplinary enquiry. There is no materials produced to show that the writ petitioners were given a notice of enquiry. No witnesses were examined after submission of list of witnesses or documents, if any. Petitioners were not given any opportunity to cross examine the witnesses they were actually examined . On the other hand, the enquiry officer himself in his report Ext.R3(b) stated that he has not gone into the full enquiry regarding the particular incident and a detailed enquiry is required to revel the full details. The respondents did not also satisfy the court that even the said report was served on the writ petitioners. The enquiry officer in the enquiry report Ext.R3(b) itself stated that as an initial measure for the smooth functioning of the organization, the services of the writ petitioners has to be terminated with immediate effect. He also suggested that a detailed enquiry and inspection has to be done by a financial inspection team to inspect the records of the organization, fix standard norms regarding wages, advances etc. for the daily wage and contract employees, as per rules. According to him, detailed study has to be conducted with respect to the workload of the organisation. Thus, it can be seen that the report was only making certain suggestions for the improvement of the

working of the STED Project and was not an enquiry specifically to go into the misconduct, if any, alleged against party respondents 1 to 3 herein. The enquiry report also does not show that the conclusions reached were based on any evidence by examining the witnesses and any opportunity to participate in the said enquiry was afforded to the concerned employees. Therefore, in the absence of any material placed on record to come to a different conclusion, we are of the considered view that termination of the service of the writ petitioners were terminated in an arbitrary manner, without even following the elementary principles of natural justice and hence perse arbitrary, illegal and violative of Article 14 of the Constitution of India..

20. In the circumstances, the learned Single Judge was perfectly justified in quashing Exts.P14 to P16 termination orders issued to the petitioners. The learned Single Judge, however, has safeguarded the interest of the management to proceed with the disciplinary action, if so advised, after completing the enquiry into the allegation of gender harassment in accordance with the apex court decision in Vishaka's case (supra). Further, petitioners were not directed to be paid any wages during the period during which they were kept out of employment, which is also a matter left open to be decided later by the management at

appropriate stage. Since termination of services were held illegal, necessarily, they have to be reinstated. According to the learned counsel for the appellant, they are only casual employees and therefore, the direction to reinstate them into the service may not be appropriate. But we find that the learned Single Judge has only directed to reinstate the writ petitioners in the same position which they were holding prior to the termination of service. In other words, they were only restituted to the same position which they were holding and therefore, the nature of employment in no way has been altered by the direction in the judgment under appeal.

The position being thus clarified as above, we find no merits in this appeal. According, it is dismissed.

P.R. RAMAN,
(JUDGE)

ANTONY DOMINIC,
(JUDGE)

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